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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,414

06/26/2003

Ralph D'Agosta

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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

EXAMINER

LEJA, RONALD W

ART UNIT

PAPER NUMBER

2836

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/606,414

Applicant(s)

D'AGOSTA, RALPH

Examiner

Ronald W. Leja

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. (4,947,025).

Rodriguez discloses a portable water heating system, comprising a housing (15), a water inlet (29) disposed on the outside of the housing, a first hose nipple (29b) adapted to connect a water supply (23), a lining adapted to protect the inside of the housing from corrosion (Col. 2, lines 4-5), a heating element (17), a water outlet disposed on the outside of the housing and a second hose nipple (29d) attached to the water outlet. Rodriguez further discloses use of a thermostat (66), but actually relies upon the thermostat as a high temperature shutoff element, which shuts-off the heating circuit (30) when the temperature rises to a predetermined point. In the broad sense and especially since the claim language is considered to be broad, since thermostat (66) has a predetermined point for shut-off, this could reasonably be interpreted as being adjustable. However, it appears intended for high temperature shut-off and not for adjusting a water temperature level during use of the product. On the other hand, Alston et al. teach the use of thermostatic control (44) for controlling the current applied to the heating element (30). It would have been obvious to incorporate the teachings of Alston et al. as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application. This

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in no manner takes away from a water-regulating valve, but rather complements the valve and adds a further degree of choice and safety to the design. As an example, the typical residence of a consumer often incorporates a tank water heater, which utilizes an adjustable thermostat and in most cases, especially wherein children are part of the household, the thermostat is set so that the hot water from a faucet (no mixing with cold) will not scald the children. Even with such a set-up, the water is regulated or mixed (hot with cold) at the faucet at varying degrees depending upon application, i.e. drinking or taking a bath etc.... See Figs 1, 2 and Col. 2, line 62 thru Col. 3, line 42. Rodriguez discloses that the device is supported by pipe (23) and does not appear to disclose the use of wheels, handle or mounting interface. However, Alston et al. teach the use of wheels (Claim 4) and handle (Claims 5, 6). It would have been obvious to incorporate the teachings of Alston et al. as a means to offer ease in moving the portable water heater from location to location.

Claims 3, 7, 8 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Alston et al. and further in view of Winter et al. (6,628,894).

Claim 7 adds a mounting element interface for securing the system to a mounting element when not in use. Winter et al. teach a portable water heating system wherein brackets allow for wall mounting. Therefore, it is the opinion of the Examiner, that since the device is portable, and teaches brackets for wall mounting, it would have been obvious to utilize a mounting element interface for storage of the portable device when not in use, such as on a wall, thereby offering a storage place, for example, in a consumer's garage and wherein the device would not be subject to

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being kicked around or bumped by other items stored on the floor. This would lead to a longer lasting device.

Claims 3 and 12 are drawn to the use of ground fault protection and high temperature shut-off. Rodriguez discloses use of a thermostat (66), but actually relies upon the thermostat as a high temperature shutoff element, which shuts-off the heating circuit (30) when the temperature rises to a predetermined point. Alston et al. teach the use of thermostatic control, *supra*. It would have been obvious to incorporate the teachings of Alston et al. as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application. See Figs 1, 2 and Col. 2, line 62 thru Col. 3, line 42. Winter et al. teach the use of ground fault protection. See Column 3, lines 21-30, wherein it is suggested that ground fault protection is considered to be excellent safety practice. Ground fault protection is known in the art to be provided in those environments (i.e. bathrooms) wherein water usage and exposure by the consumer along with electrical devices are in close proximity. However, not all locations wherein a portable electrical device is utilized offer GFCI outlets. Therefore, it would have been obvious to incorporate the teachings of Winter et al. as a means to enhance safety to the consumer and increasing applications to more hostile environments, while ensuring safety for the user, by incorporating GFCI technology within the portable device. Ground fault circuit breakers (GFCIs) are, in the barest sense, composed of a first ground fault device, the detector and a second ground fault device, the interrupter and the interrupter would obviously be placed near the incoming source of power, so as to isolated the incoming power from the remaining portable device, thereby further increasing safety to a

consumer. Alston et al. teach the use of wheels (CL. 14) and use of a handle (Cls. 15 & 16), see Figure 1. It would have been obvious to include these teachings as a means to help move the portable device of Rodriguez around to other locations, especially when the tank was full of water. This would appeal to the consumer and increase sales.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Nelson (4,974,551) and Twigg (5,853,553).

These set of claims are drawn to use of a double-walled housing and use of an anode. Nelson teaches the use of double-walls in a water heating system (see Fig. 8 and Col. 13, lines 34 et seq.). It would have been obvious to incorporate the teachings of Nelson as a means to offer more durability to the design by protection to the interior tank, but also to offer a means to help keep the water in the tank warm longer by insulating the tank from the outside environment, thereby increasing efficiency of the system. Twigg teaches that it is known to use an anode within a hot water tank in order to prevent corrosion. Therefore, it would have been obvious to incorporate the teachings of Twigg as a means to help prevent corrosion of the components coming in contact with the water, thereby increasing the longevity of the overall device.

Applicant's arguments filed 1/31/2007 have been fully considered but they are not persuasive. It is noted that Applicant only appears to argue the application of the Rodriguez and Alston et al. References, as such, the Examiner can only glean from the silence of Applicant, that Applicant is in agreement with the application of the other References to the claims, supra. Furthermore, the use of "adapted to", such as, "adapted to be portable to store and transport water" is not afforded positive limitation status; the "adapted to" merely requires the ability to so perform. In this case, the

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tank of Rodriguez has the ability to perform the storage and transport. Applicant essentially argues that the objective of Rodriguez is to offer a simple construction for a single manually operated valve that will shut off and turn on cold, warm or hot water. This may be the case, but as stated above, the incorporation of the teachings of a thermostat does not take away from such a valve, but merely complements the valve.

Alston et al. teach the use of thermostatic control (44) for controlling the current applied to the heating element (30). It would have been obvious to incorporate the teachings of Alston et al. as a means to offer the ability to adjust the temperature of the water in accordance with the desires of the consumer, for the changing seasons of the weather and as a means to increase design application. This in no manner takes away from a water-regulating valve, but rather complements the valve and adds a further degree of choice and safety to the design. As an example, the typical residence of a consumer often incorporates a tank water heater, which utilizes an adjustable thermostat and in most cases, especially wherein children are part of the household, the thermostat is set so that the hot water from a faucet (no mixing with cold) will not scald the children. Even with such a set-up, the water is regulated or mixed (hot with cold) at the faucet at varying degrees depending upon application, i.e. drinking or taking a bath etc....

Alston et al. teach the use of thermostatic control (44) for controlling the current applied to the heating element (30); the valve of Rodriguez would still be used for adjusting the temperature of the water being used by the specific person at the time. Additional motivation for incorporation of an adjustable thermostat, as fairly taught by Alston et al., is that it would have been obvious for allowing a quick heating of the water in the tank, when increased usage by many persons has been anticipated. There would result in less time waiting for the water to heat up. Also, safety is often a high priority in an engineered product, the teachings of an adjustable thermostat would have been obvious as a means to avoid scalding of younger children should they accidentally turned on the valve of Rodriguez to the purely "hot" setting. Therefore, the application of the teachings of Alston et al. to that of Rodriguez do not take away

from the objective of Rodriguez. Arguments that Alston et al. teach a tankless water heater, being of light weight and etc... have no probative value whatsoever, since the teachings of tankless and lightweight were not relied upon and one would be motivated to look to any portable water/medium heating apparatus for teachings, not just those which utilize a housing adapted to be portable to store and transport water received therein.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald W. Leja whose telephone number is (571)272-2053. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on (571)272-2800. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Ronald W. Leja
Primary Examiner
Art Unit 2836

rwl
April 11, 2007

